

Date of decision:16-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. P.B.Majmudar for the petitioner  
Mr. D.A.Bambania for the respondents.

Coram: S.K.KESHOTE,J  
(16-12-95)

ORAL JUDGMENT:

This petition exhibits how an employee who has got promotion by producing fake S.S.C. mark sheet has the courage to approach this Court under Article 226 of the Constitution of India, praying for mercy to be granted. Brief facts of the case are to be noted for deciding this

petition.

2. The petitioner has entered in the service of the State of Gujarat in Medical Education and Research Department on 1-5-1961 when he was appointed as Laboratory Attendant. From the post of Laboratory Attendant promotion has been provided to the post of Laboratory Assistant, from amongst the persons who possess the qualification of S.S.C. and have to their credit five years' experience on the lower post. The petitioner was not possessing the qualification of S.S.C. and to get promotion and gains for himself he produced fake mark sheet of S.S.C. Not only he produced fake mark sheet, but he got promotion also to the higher post on 30th May, 1990. But for the fake mark sheet of S.S.C., the petitioner would not have been promoted as he was not eligible for the same.

3. Charge sheet was given to the petitioner by the Department, when it has come to the notice that the petitioner, by producing fake mark sheet, got promotion. Reply has been submitted and the petitioner has, as it can be inferred from the reading of the averments in the writ petition, admitted his guilt. A departmental inquiry has been held and he was held to be guilty of the charge of producing fake mark sheet and getting promotion thereby. He was given a second show cause notice and at this juncture, having apprehension of major penalty, the petitioner has approached this Court by filing special civil application No.1309 of 1994. A unilateral undertaking was filed by the petitioner in the writ petition, copy of which has been annexed to the present writ petition at annexure-F (page 33). In that writ petition notice was issued, but no interim relief appears to have been granted. The respondents, having taken into consideration the grave misconduct, have awarded the penalty of dismissal from service to the petitioner. This order of dismissal is the subject of challenge in the present writ petition.

4. Reading of the writ petition gives out that the petitioner has admitted his guilt and has not challenged the order of dismissal on any ground whatsoever, except praying for mercy to be granted to him in the matter of punishment, by awarding the lesser punishment of withholding some increments. Mercy has been prayed for on the ground that he is extremely poor person and further on the ground that he has already given undertaking that whatever benefit he got by way of promotion, he will return back and he will not challenge the inquiry conducted by the Department, and further that he will accept any other punishment except dismissal, termination or removal from service.

5. In para 7 of the writ petition the petitioner has stated that in any case after so many years of service, it was not necessary to send the petitioner at home. Not only that, but the petitioner was given an assurance that his employment will not be taken away. Therefore he had taken a particular stand in the departmental inquiry. From these averments it is clear that the petitioner has admitted his guilt, though, as stated earlier, from the writ petition it can necessarily be inferred.

6. Only two fold contentions have been raised by the learned counsel for the petitioner. Firstly he has contended that while awarding the penalty of dismissal the undertaking which has been given by the petitioner before this Court in special civil application No.1306 of 1994 was not under consideration. It has next been contended that the penalty of dismissal is excessive and disproportionate to the guilt, and lesser punishment should have been given looking to the fact that the petitioner is a poor person and low-paid employee, he is in service since 1967 and he is the only earning member of the family. On the other hand the learned counsel for the respondents contended that the petitioner has produced forged school leaving certificate of Durga High School showing remarks of S.S.C. pass to the office and has fabricated false evidence in order to get promotion for which he was not eligible in fact. It was an intentional and deliberate act on the part of the petitioner, and a person who fabricates documents and gets benefits should not have been shown leniency and he has been rightly been dealt with by giving the penalty of dismissal from service. It has next been contended that so far as the under taking of the petitioner is concerned, it is a unilateral action and that too for his own benefit which was not binding on the respondents. In the cases where documents are forged for one's own gains and profits, minimum penalty should be removal/dismissal of the person from service as otherwise it will create a bad precedent and will encourage people to indulge in creating false or forged documents for their own gains. Lastly it has been contended by the learned counsel for the respondents that in the matter of punishment to be awarded on proved misconduct, this Court sitting under Article 226 of the Constitution normally may not interfere.

7. I have considered the submission made by the learned counsel for the parties. In a case where the petitioner, on the basis of forged mark sheet got promotion, for which otherwise he was not eligible, I fail to see what punishment other than dismissal should have been awarded. The contention of the petitioner that he is a poor person and as such may not be severely dealt with, if accepted, then I

fail to see which are the cases in which extreme penalty of dismissal, removal or termination has to be awarded. In case a person who has forged document for his own benefits is allowed to be retained in service on the ground that he will be rendered jobless, it will encourage the people in Government service or services of Corporations or elsewhere to forge documents and get benefits. Also, they will become fearless and carry the impression to do whatever they like and this Court will come to their rescue on sympathetic grounds.

8. Extraordinary jurisdiction under Article 226 of the Constitution is meant for advancement of justice, both legal and equitable, to rescue and give benefit to honest people and for protection of their rights, but not for the persons of the category of cheaters and forgers. On the basis of the petitioner's own unilateral undertaking and that too in the language in which it was given, how he can escape himself from the liability to be severely dealt with. This undertaking is not binding on the respondents. Only to get some sympathy from this court at this stage, when second show cause notice was given, the petitioner filed this undertaking and prayed that the punishment of dismissal should not have been awarded. It is not the case where this Court has considered this undertaking in the previous proceedings and has directed the respondents not to award the penalty of dismissal, removal or termination. It is worthwhile to make reference to the under undertaking. In para 1 the petitioner has stated that he will return back the benefits which he has received on account of promotion, and he will not challenge the inquiry conducted by the department. How this undertaking has any relevance and binding effect on the Department? Naturally when the petitioner has got promotion on the basis of forged document he has to return all the benefits. Merely because he has given undertaking that he will not challenge the inquiry, how it may come to his rescue in the matter of award of punishment? What the petitioner has next stated is that he shall accept any other punishment imposed upon him by the Department except termination, dismissal, removal from service. The petitioner by giving this undertaking assumes the role of disciplinary authority or the appointing authority. He wants to put to terms the disciplinary authority or the appointing authority in the matter of punishment to be awarded to him on proved misconduct. How this bargain, which the petitioner is proposing or anticipating, could have been there with the Government Department and that too in the matter of disciplinary proceedings and the ultimate punishment to be awarded on proved misconduct. I do find sufficient merit in the contention of the learned counsel for the respondents that

the undertaking has no binding effect on the respondents and they are not bound by it.

9. In the matter of penalty to be awarded on proved misconduct this Court has no power of judicial review sitting under Article 226 of the Constitution of India. What punishment should be awarded is absolutely in the discretion of the appointing or disciplinary authority and this Court sitting under Article 226 of the Constitution will not act as a court of appeal. This Court sitting under Article 226 could not go into the question whether punishment which has been imposed on the delinquent is proportionate to the guilt or not. Sufficiency of penalty to be awarded or what just and reasonable penalty is to be awarded are not the matters on which this Court should go into. These are matters exclusively within the powers of the disciplinary authority dealing with departmental inquiries, who has to form reasonable opinion about punishment or penalty to be imposed on proved misconduct. I cannot do better than to refer to the decision of the Supreme Court on this question in the case of State Bank of India & Ors vs. Samarendra Kishore Endow & Anr., JT 1994(1) SC 217.

10. The misconduct which has been alleged and found proved is very serious, and otherwise also the punishment imposed cannot be said to be excessive or disproportionate. In the present case where the petitioner who is a Government servant has forged document and got the benefit thereby deserved no sympathy whatsoever in the matter of award of penalty. Such Government servants should be chopped off from the service, otherwise retention of such persons in service will not only encourage other persons to do illegal activities but it will also spoil the whole atmosphere in the Department.

11. In the result the writ petition fails and the same is dismissed. Rule discharged, with no order as to costs.